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JOHN R. WILNER

EX PARTE OR LATE FILED

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January 13, 1997

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554
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RECEIVED
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Written Ex Parte Presentation in PR Docket No. 93-61

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(1) of the Commission's Rules, on behalf of Comtrak, notice is hereby given of a written *ex parte* presentation regarding the above-referenced proceeding. An original and two copies of this notice are being filed with the Secretary's office. We are delivering this date to Michele Farquhar, David Furth, Jane Halprin and Jay Jackson of the Commission, a letter from Bruce Kessler of Comtrak, a copy of which is attached hereto.

The letter discusses interference, construction date extensions, licensing and auction issues relating to multilateration location and monitoring service ("LMS").

Please do not hesitate to contact the undersigned if you have any questions regarding this matter.

Very truly yours,



John R. Wilner

Enclosure

cc: Michele Farquhar
Jane Halprin
David Furth
Jay Jackson

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January 10, 1997

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Ms. Michele C. Farquhar
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
1919 M. Street, NW
Washington, D.C. 20553

RE: Amendment of Part 90 of the Commission's Rules to Adopt Regulations for
Automatic Vehicle Monitoring Systems (PR Docket No. 93-61)

Dear Ms. Farquhar:

Comtrak respectfully submits this letter to inform the Federal Communications Commission (the "Commission") of the needs of individuals and companies, other than Teletrac and MobileVision, that operate or are interested in operating multilateration location and monitoring service ("LMS") systems in the United States.

As an equipment manufacturer, Comtrak has been involved in location technology for more than twenty years, being a supplier of sophisticated radio frequency location systems to the U.S. government. In 1992, Comtrak expanded the deployment of its equipment from government to commercial purposes when it entered into a supply agreement with Southwestern Bell Mobile Systems ("SBMS"). Under this agreement, Comtrak was the equipment supplier for SBMS and helped construct an LMS system in Chicago. While SBMS has decided to terminate its LMS operations, Comtrak remains committed to continue the commercialization of its product in the United States. Comtrak equipment is also deployed in commercial LMS operations in Mexico City.

Comtrak has been involved in the Commission's LMS-related proceedings directly and indirectly since 1992. Comtrak's early participation in these proceedings was achieved through its input to the filings of SBMS and through joint meetings with the Commission's staff. In April of 1996, Comtrak began interacting with the Commission on LMS matters independently of SBMS. Representatives of Comtrak have since met directly with David Furth, Jay Jackson, Sandra Danner, Tom Dombrowsky, Mike Kemper, Jackie Chorney, Jane Halprin, and Kathleen O'Brien-Ham of the staff to demonstrate Comtrak's LMS technology and to become educated on the federal regulatory requirements governing LMS licensees. In addition, Comtrak has maintained regular contact with members of the Wireless Bureau staff to track the status of the Commission's response to petitions for reconsideration in the main LMS proceeding, the status of auctions for allocating spectrum for additional LMS licenses

and the status of various waiver requests. As can be seen from the foregoing, Comtrak has been actively involved in the Commission's LMS proceedings.

In its Order released on October 30, 1996, the Wireless Bureau granted the requests of Teletrac and MobileVision to extend the deadline by which LMS multilateration licensees must construct their systems in order to achieve grandfathered status. More specifically, the Wireless Bureau stated that "[a]t this point, it appears that MobileVision and Teletrac intend to be the principal national providers of LMS service to the public. As such, we give serious consideration to their need for additional time to construct."¹ While Comtrak appreciates the desire of the Wireless Bureau to serve the public interest by granting waivers that encourage current licensees to implement and make operational their LMS systems, the quoted statement suggests that the Wireless Bureau may be serving the needs of a few licensees at the expense of creating a diversified group of competitive LMS providers. Comtrak, therefore, respectfully urges the Commission to consider the needs of other companies interested in LMS in all future LMS proceedings.

Like MobileVision and Teletrac, Comtrak intends to be a national provider of LMS services, either individually or through a joint venture with a business partner. Comtrak, however, is encountering some difficulties in achieving this goal due, in large part, to the actions of the Commission. In order for Comtrak to offer LMS, it must have the necessary spectrum, predictable federal rules in place and complete information regarding the identities and service offerings of other licensees in any of the markets in which Comtrak intends to operate. Unfortunately, there are several issues pending in the LMS docket that must be resolved before Comtrak's needs can be met. To improve this situation, Comtrak respectfully asks that the Wireless Bureau consider the suggestions detailed below as it moves forward with the LMS proceedings.

The Commission Should Issue Immediately an Order in the LMS Proceeding

There are Petitions for Reconsideration pending before the Commission in the LMS docket. Future growth in the LMS industry is limited by the lack of finality on these pending matters and the long delay in the Commission's response. For example, Comtrak has found that current and potential licensees are hesitant about making all of the resource commitments necessary to provision a nationwide or regional LMS system because they are uncertain about matters such as how interference issues will be resolved or when they will be able to secure additional spectrum and build new cell sites. The result is that LMS is available only in a limited number of markets and with little or no consumer choice as to service providers. In addition, until final rules are issued and spectrum can be auctioned, the viability of any one provider is jeopardized by its inability to secure enough spectrum to create a system with the coverage or features necessary to recoup the significant investment required to implement an LMS system. Without final rules, current operators are at a disadvantage in their ability to

¹ Extension of Construction Deadline for Grandfathered Multilateration Licenses in the Location and Monitoring Service, DA 96-1798, Order Released Oct. 30, 1996, para. 5 [hereinafter the "Extension Order"].

provision LMS and potential operators may choose to forego plans to offer LMS in exchange for offering services governed by more definitive and timely-issued regulations.

The Wireless Bureau Should Compile a List of Grandfathered Licenses

Based on the information currently available at the Commission, it is difficult if not impossible for interested parties to identify current LMS licensees. When asked for a list of licensees, members of the Wireless Bureau staff stated that such a list has never been compiled because it would be a waste of resources to do so until the construction deadline had passed and all grandfathered licensees could be identified. In light of the Wireless Bureau's many other responsibilities, Comtrak is sympathetic to the need to optimize resources. Comtrak, however, does ask that the Wireless Bureau make it a top priority to generate a list of LMS licensees soon after the construction deadline has passed.

The Wireless Bureau Should Encourage the Submission of Service Area Maps

The current Part 90 rules governing LMS do not require licensees seeking grandfathered status to file service area maps that depict their systems built as of the construction deadline. Members of the Wireless Bureau's staff have stated that certain licensees intend to provide such maps voluntarily. Comtrak suggests that the Wireless Bureau strongly encourage this practice for current licensees and also formally require such submission by all parties awarded licenses through the auction process. The filing of service area maps will allow all parties interested in participating in future auctions to gain a clear understanding of the areas in which LMS has yet to be offered and the resulting lack of uncertainty will increase the value of any spectrum to be auctioned. The maps are also useful for identifying and eliminating interference between licensees.

The Wireless Bureau Should Reject Construction Deadline Extension Requests

The Wireless Bureau has on three occasions granted extensions to the construction deadline that must be met in order for licensees to achieve grandfathered status.² Review of the Bureau's orders makes clear that the rationale for granting such extensions was to give current licensees the opportunity to deploy their LMS systems and thus to increase the overall viability of LMS. While the Wireless Bureau has achieved the desired result with a few licensees such as Teletrac, it is possible that continuous extensions are actually harming the LMS industry and consumers. Each time a construction deadline is extended, the auction of

² Extension Order, para. 1.(extending the deadline to Jan. 1, 1997); Request of Pinpoint Communications Networks, Inc. et al. for Waiver of § 90.363(d) of the Commission's Rules, DA 96-1192, Order Released July 25, 1996, para. 1; Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, FCC 96-115, Order on Reconsideration Released Mar. 21, 1996, para. 8 (extending the deadline to Sept. 1, 1996). In addition, the Bureau has pending before it a motion requesting a further extension. Motion of Otto N. Frenzel, III for Extension of Time to Construct Major Modifications to Licenses (dated Dec. 18, 1996).

additional spectrum for new LMS licenses is effectively postponed thus preventing current licensees from securing the additional cell sites needed to maximize service area coverage and preventing parties wishing to deploy initial LMS systems from entering the market. Comtrak, therefore, urges the Wireless Bureau to hold to its statement that it "does not contemplate any further extensions of [the construction] deadline."³

Auction Participants Should Be Required to Demonstrate the Technical Ability to Deploy LMS Systems

To discourage speculation and to encourage the rapid deployment of LMS, Comtrak recommends that the Commission require all potential spectrum bidders to demonstrate access to immediately deployable LMS technology as a prequalification for participating in an auction. Implementation of this recommendation will ensure that new LMS systems will be operational within a short timeframe following any auction and will thus service the public interest by promoting the efficient use of valuable spectrum and increasing competition in the LMS industry.

The Commission Should Provide Clear Spectrum to All LMS Operators

Comtrak asks the Commission to give substance to its rule that LMS licensees have primary status over Part 15 users operating in the same frequency bands.⁴ This request includes establishing Commission-sponsored mechanisms for resolving interference disputes between Part 15 users and LMS operators. Comtrak also asks that the Commission take steps to eliminate interference between multilateration and nonmultilateration licensees sharing the 919.750 to 921.750 MHz frequency band, or D band. As pointed out by SBMS in its Petition For Reconsideration,⁵ the proposed band plan allows for coexistence of incompatible technologies within the D band. This has been observed in our Chicago system with the presence of a nonmultilateration system that causes service degradation. This fact makes the D band less desirable than the other multilateration frequency bands and places LMS licensees operating on the D band at a disadvantage compared to those licensees operating on frequency bands not shared with nonmultilateration licensees. We strongly urge the Commission to act on SBMS' petition and eliminate this inequity. Comtrak, therefore, requests that nonmultilateration operators not be allowed to operate in the D band in order to make all three multilateration bands function equally.

³ Extension Order, para. 1.

⁴ Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, FCC 95-41, Report and Order Released Feb. 6, 1995, para. 35.

⁵ SBMS Petition For Reconsideration in the matter of Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Apr. 24, 1995, p. 4, para II.

The Commission Should Prevent Current Licensees from Expanding Their Systems Outside of the Auction Process

Finally, Comtrak asks the Commission to ensure that all current and future LMS licensees are treated equally with respect to their ability to secure spectrum for new cell sites. To establish such equal treatment, the Wireless Bureau must prevent current grandfathered licensees from expanding their coverage area through new cell sites added by means other than auctions. Comtrak is not suggesting that grandfathered licensees may not add cell sites through the assignment of such sites to them from other grandfathered licensees. Comtrak's concern, however, is that current licensees should not be able to circumvent the Commission's rules through a series of waivers that allow them to expand their coverage area by adding new cell sites, by moving existing cell sites far beyond the 2 kilometer limit or by adding "fill-in" cell sites all under their current authorizations. Instead, these licensees should be required to purchase additional spectrum at auction even for the purpose of expanding systems already licensed.

Comtrak appreciates the opportunity to express its views to the Commission. Please do not hesitate to contact the undersigned if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce S. Kessler", written in a cursive style.

Bruce S. Kessler
Director
Comtrak